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OFFICE OF PETITIONS

In re Application of
Robert Uskali et al.
Application No. 09/837,526
Filed: April 18, 2001
Attorney Docket No. PD05962AM

ON PETITION

This is a decision on the petition filed February 17, 2006 under 37 CFR 1.137(b)¹ to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A Final Office Action was mailed July 1, 2005 setting a three month period for reply. In response thereof, petitioners filed an amendment on September 26, 2005 which did not place the application in condition for allowance. Therein, an Advisory Action was mailed on November 7, 2005. No proper and timely reply to the office action having been filed, this application became abandoned October 4, 2005. Accordingly, a Notice of Abandonment was mailed January 31, 2006.

¹A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

Comes now petitioner with the instant petition to revive with a Request for Continued Examination (RCE), an Information Disclosure Statement as the submission required under 37 CFR 1.114 and a three month extension of time request.

The petition does not satisfy requirement (1) under 37 CFR 1.137(b) in that the filing of only the IDS with the RCE would be sufficient if there wasn't an outstanding office action. In this instance, the IDS, while a proper reply to the RCE cannot serve as a response to place the application in condition for allowance.

The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application.

Petitioner must submit a proper reply to the final Office action mailed on July 1, 2005 or a proper submission under 37 CFR 1.114, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

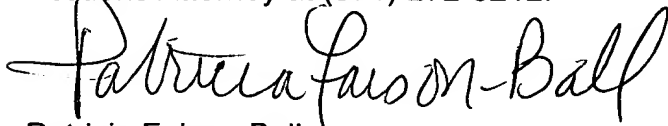
With respect to the extension of time request, pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$1020.00 extension of time fee submitted with the petition on February 17, 2006, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 50-2117.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions